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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-17-0005
)	
PETITION TO AMEND RULE 50(b))	COMMENT
OF THE ARIZONA RULES OF THE)	
SUPREME COURT OF ARIZONA)	
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Pursuant to Rule 28, Ariz. R. Sup. Ct., the undersigned lawyers¹ provide their comments regarding the petition to amend Rule 50(b), Ariz. R. Sup. Ct. The proposed Rule Amendment modifies appointments to the Attorney Discipline Probable Cause Committee (“ADPCC”). Presently, members of ADPCC cannot

¹ All of the undersigned counsel regularly represent respondents in discipline cases and collectively have represented hundreds of respondents over many years. In addition, several of the undersigned counsel have served as Bar counsel or ethics counsel before entering private practice.

serve more than two consecutive three-year terms. The proposed amendment eliminates any reference to term limitations.

The Petition to Amend (“Petition”) offers three conclusions, to wit: (1) ADPCC functions effectively and fulfills its intended purposes; (2) other Court committees involved in attorney regulation do not have term limitations (including, according to the Petition, the Committees on Examinations and Character and Fitness); and (3) the term limitations deprive the Supreme Court “of the discretion to reappoint members whose experience and expertise would be beneficial to the Committee and the attorney regulation process.”

Before we address the merits of the Petition, two issues deserve attention. First, the existing rule only prevents the Court from reappointing a member for more than two *consecutive* three-year terms. Therefore, a member with experience and expertise who wishes to continue serving, and whose services the Court wants, must only take a one-year break every six years under the existing rule.

Second, the Court adopted the current version of Rule 50(b) when wholesale changes were made to the discipline system, which became effective on January 1, 2011. This means the system only now faces its first cohort of term-limited members. This fact explains the absence of any evidence that a problem exists. Six years ago, the Court intended for there to be term limits. Now, the Certification and

Licensing Division (“CLD”) suggests a change is necessary because, according to CLD, the Court—which previously limited its own discretion—lacks discretion. Seemingly, CLD has identified a solution in search of a problem.

With term limits, the ADPCC gets turnover and the opportunity for fresh views and new perspectives. It also allows for greater participation by the membership in the lawyer regulation system. If there is concern about ensuring some continuity when new members are appointed, the Court can certainly stagger the terms so that the entire ADPCC is not replaced at once. While certain of the Court’s Committees might not have term limitations, it is notable that the State Bar’s Standing Committee Guidelines mandate that members may only serve two consecutive three-year terms, absent special circumstances. The purpose for that Guideline is presumably the same as that which guided the Court when it initially adopted Rule 50(b): to allow greater participation by the membership so that differing views can be considered.

While we appreciate the commitment of time which members make, and do believe competency on ADPCC requires that members serve for a period of years, it is important that new members be appointed to ensure that positions and policy do not become fixed or rigid. Finally, our interest in this rule change petition relates to our representation of respondents in discipline matters. While we don’t believe probable cause findings will turn, necessarily, on whether this rule change is

adopted, we are concerned about an ADPCC make-up that has not changed in more than six years. ADPCC only reviews matters where bar counsel have concluded that an ethical violation warranting either diversion or a sanction is needed. Over a number of years, one can become conditioned to seeing only lawyers who have committed violations, and thus, the inclination to question findings and conclusions can decrease.

In conclusion, we urge the Court to deny the Petition at this time. If, in the future, after a few more cycles of appointments, the Court finds a lack of willing and competent ADPCC members, a lack of institutional memory, or something else about the process that requires the need to abandon term limits, the Court can revisit the issue.

RESPECTFULLY SUBMITTED this 19th day of May, 2017.

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